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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,552	08/01/2006	Kakuhei Isawa	Q90515	1938
65565	7590	01/28/2011		
SUGHRUE-265550 2100 PENNSYLVANIA AVE. NW WASHINGTON, DC 20037-3213			EXAMINER WILLIAMS, LELA	
			ART UNIT	PAPER NUMBER
			1789	
			NOTIFICATION DATE	DELIVERY MODE
			01/28/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SUGHRUE265550@SUGHRUE.COM
USPTO@SUGHRUE.COM
PPROCESSING@SUGHRUE.COM

Office Action Summary	Application No. 10/550,552	Applicant(s) ISAWA ET AL.	
	Examiner LELA S. WILLIAMS	Art Unit 1789	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 13, 16-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 13, 16-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment filed November 12, 2010 necessitated the new grounds of rejection presented in this Office action. Accordingly, the following action is made final.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 12- are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 59-163128 in view of Sato et al. WO 03/016544 (US 7,374,915 is relied upon for translation).**

Regarding claims 12, 13, 16, 17, 18, 19, 21, 22; JP 59-163128 discloses a method wherein an inert gas is bubbled through a liquid food product such as milk to prevent oxidation. The inert gas reduces the amount of dissolved oxygen in the product and the product is subjected to high temperature sterilization and packed and sealed in a bacteria free atmosphere which keeps the oxygen dissolved in the beverage reduced (Entire document, oral translation relied upon).

The reference does not disclose the use of DHNA.

Sato discloses a process for producing a milk beverage wherein DHNA is added to the beverage. Sato teaches that DHNA "exhibits the effects of alleviating abdominal ailments which occur upon ingestion of milk" (col. 5, line 24). Given that 1, 4-dihydroxy-2-naphthoic acid is known to alleviate abdominal ailments associated with milk, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the milk beverage of JP 59-163128. Given that the process of JP 59-163128 dissolves an inert gas in the beverage product, the DHNA would have naturally been stabilized.

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Response to Amendment

4. Applicant's amendment filed November 12, 2010 is sufficient to overcome the 35 U.S.C. 112, second paragraph rejection set forth in the previous Office Action. The rejection is withdrawn.

Response to Arguments

5. Applicant's arguments, with respect to the rejection(s) of claim(s) 12-15, 18, 19, 21, and 22 under 35 U.S.C 102(b) and 16, 17, and 20 under 35 U.S.C 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of JP 59-163128 in view of Sato et al. WO 03/016544.

Applicant's arguments with respect to Sato and Mizandjian have been considered but are moot in view of the new ground(s) of rejection. Applicant argues the method of Sato as compared to that presently claimed (page 11); however note that while Sato is directed to a process for producing DHNA, the reference is not being applied in a way which addresses the process for preparing DHNA. Sato discloses "[t]he composition of the present invention, or DHNA or a salt thereof (hereinafter may be referred to simply as "the composition, etc.") exhibits the effect of alleviating abdominal ailments which occur upon ingestion of milk. In addition, the composition, etc. exhibits the effect of promoting differentiation of osteoblasts and expression of osteoblast function, as well as the effect of suppressing formation of osteoclasts, and therefore is useful for preventing or treating metabolic bone diseases such as osteoporosis. The composition, etc. may assume the form of food and beverage, or a drug." (col.5, lines 22-

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30). Therefore, it would have been obvious to one of ordinary skill in the art to add DHNA to milk beverages.

Regarding Applicant's arguments addressed as Difference "c", again, Applicant argues the process of preparing DHNA and the reference is being applied for its use of DHNA. It is known in the art to bubble inert gas through a liquid food product such as milk to prevent oxidation, as shown by JP 59-163128. Given that the method of displacing oxygen by an inert gas in milk is known to preserve the product and given Sato's teaching of DHNA, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the milk beverage of JP 59-163128.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 1789

/L. S. W. /

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787